

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-206405

DATE: August 10, 1982

MATTER OF: Texas Medical Instruments

DIGEST:

1. A proposal is properly excluded from the competitive range for informational and other deficiencies where those deficiencies are so material as to preclude upgrading the proposal to an acceptable level except through major revision.
2. Where solicitation does not require prior experience as an "absolute prerequisite" to submission of an offer or receipt of an award, yet establishes relevant experience as one of two preeminent evaluation criteria, the extent of an offeror's relevant experience may be evaluated since it is a comparative element upon which to judge the acceptability of competing proposals.

Texas Medical Instruments, Inc. (TMI) protests the rejection of the proposal it submitted in response to request for proposals (RFP) No. F19628-82-R-0025 issued by the Department of the Air Force. The RFP is for a Mid-Wavelength Infrared Radiometric Scanner (RADSCAN). TMI essentially contends that the Air Force's evaluation of the proposal was inaccurate and inconsistent with the evaluation criteria set forth in the RFP. We deny the protest.

RADSCAN is an infrared imaging system capable of producing a standard television format output. The RFP divides the RADSCAN project into four phases. First, the contractor is to perform a laboratory feasibility study to demonstrate the basic operation of RADSCAN. If a breadboard model cannot be proven to be workable, the Government may terminate the contract. Next, the contractor is to use the feasibility study to complete a final engineering design. From the final design, the contractor is to fabricate a RADSCAN instrument. Finally,

the contractor is to perform operational tests and calibrations on the system.

The RFP sets forth in descending order of importance (except that the first two are of equal importance) the following evaluation criteria:

- Relevant Past Performance,
- Compliance with Requirements,
- Understanding the Problem,
- Confidence Level,
- Soundness of Approach.

Although point scores for each criteria were not designated in the RFP, the Air Force applied maximum point scores of 25, 25, 20, 15 and 15 respectively for each of the evaluation criteria.

The proposed awardee received 78 of the 100 possible points. TMI received a third-high score of 48 points. The Air Force found that several of TMI's approaches to particular problems were questionable and that TMI did not present sufficient technical information to justify these technical approaches. The Air Force also found that the proposal did not reflect sufficient experience for a successful undertaking of the project. The Air Force concluded that TMI could not remedy these problems without substantially rewriting its proposal and that doing so would be tantamount to submitting a new proposal. Therefore, TMI was one of three firms initially excluded from the competitive range. The Air Force eventually excluded a fourth firm (which received a higher technical rating than did TMI) from the competitive range when proposal clarifications confirmed Air Force suspicions that its proposal was technically unacceptable.

TMI disagrees with the Air Force's evaluation. The protester contends that its proposal contains the technical detail required by the RFP and reflects more than adequate related experience to be included in the competitive range. The protester believes that the Air Force's evaluation is inconsistent with RFP provisions which state that past performance is not a prerequisite to submitting a proposal and that offerors need not include a complete detailed solution. TMI requests an independent evaluation of its proposal.

The evaluation of technical proposals and the determination of who is, and who is not, in the competitive range is a matter within the discretion of the procuring activity, since the agency is responsible for identifying its needs and the best method of accommodating them. Health Management Systems, B-200775, April 3, 1981, 81-1 CPD 255. Technical evaluations also in large measure involve the disparate subjective judgments of the evaluators which are subject to reasonable differences of opinion. See Bunker Ramo Corporation, 56 Comp. Gen. 712 (1977), 77-1 CPD 427. Our review of the evaluation of technical proposals is thus necessarily limited--we do not independently evaluate proposals and make our own determination as to their acceptability. Our review is limited to discovering whether the determination of the technical merit of a proposal is unreasonable, arbitrary, or a violation of procurement laws and regulations. Struthers Electronics Corporation, B-186002, September 10, 1976, 76-2 CPD 231; Kirschner Associates, Inc., B-178887, April 10, 1974, 74-1 CPD 182.

With these principles in mind, we have carefully reviewed the record in this case. While the record evidences disagreement between the Air Force and TMI, it does not provide a basis upon which to conclude that the Air Force evaluation was unreasonable or in violation of procurement laws or regulations.

Experience

The RFP sets forth as one of two preeminent evaluation criteria Relevant Past Performance, which is essentially defined as recent work similar or identical to RADSCAN. Additionally, experience of contractor personnel is taken into account as a subcriterion of the evaluation criterion Confidence Level. The Air Force concluded that TMI's proposal did not evidence previous work similar to RADSCAN and therefore gave the firm a low rating for this factor.

TMI disagrees with this conclusion. It contends that three projects described in its proposal firmly establish its capability to perform the RADSCAN requirement. These projects are: (1) the Thermiscope, an infrared scanner produced for numerous defense agencies; (2) a Kinematic Infrared Radiometric Imaging System (KIRRIS), and (3) a high-speed infrared imaging system which TMI modified, but did not manufacture or design, for the Army's Night Vision Laboratories.

TMI's proposal lists seven very general aspects of the Thermiscope which are similar to RADSCAN, but does not provide any technical detail concerning the capabilities

and design of the Thermiscope. Nor is there significant detailed discussion of how its Thermiscope experience would benefit TMI in terms of performing the RADSCAN requirement. Therefore, despite the general similarities listed, we find no basis to question the reasonableness of the Air Force's determination that the Thermiscope does not provide TMI's ability to perform this requirement, especially in view of the fact that TMI concedes that a number of features vital to RADSCAN are absent from the Thermiscope, but present in KIRRIS.

KIRRIS does appear to be very similar to RADSCAN in many respects. However, the Air Force properly did not consider KIRRIS as relevant past experience because at the time it submitted its proposal, TMI had not developed or produced KIRRIS; rather, TMI had merely presented a proposal to the Army Missile Command to develop and produce KIRRIS.

TMI next contends that the evaluators failed to adequately consider the third major project it listed, the modification performing for the Night Vision Laboratory. We observe, however, that the proposal contains no information concerning the extent of the modification that TMI performed or the similarity the imaging system to RADSCAN. Even though the modification may have been quite substantial and this work may in fact be quite similar to RADSCAN, we point out that a technical evaluation is made on the basis of information submitted with a proposal. No matter how capable an offeror may in fact be, if it does not submit an adequately written proposal which reflects that capability, it will not be considered to be in the competitive range. See Servrite International, Ltd., B-187197, October 8, 1976, 76-2 CPD 325. Based on the limited information in the proposal concerning the modification, we find reasonable the Air Force's failure to accord the modification any weight.

TMI argues that even if its proposal does not establish sufficient experience, excluding it from the competitive range partially on the basis of insufficient experience is inconsistent with the terms of the RFP. TMI points out that the RFP provides:

"Past performance is not an absolute prerequisite to submission of an offer in response to or receipt of a contract as a result of this RFP. However, offerors not submitting past performance data must indicate in their proposal that they have no relevant past performance."

TMI contends that this provision in effect states that an offeror will not be penalized for lack of relevant past experience and that in light of this paragraph, the Air Force's criticisms of TMI's experience are improper.

We disagree. This provision does no more than state that the Air Force will not refuse to consider an offeror that lacks experience. The RFP clearly establishes relevant experience as one of two preeminent evaluation criteria. Thus, it is entirely proper to consider the extent of an offeror's experience and to downgrade a proposal which fails to demonstrate adequate experience. The Air Force did no more than this. It did not, as TMI's argument implies, raise experience to the level of a prerequisite to the award of a contract. It was, in our view, no more than a comparative element upon which to judge the acceptability of competing proposals. Under the circumstances, we conclude that the Air Force's conclusion that TMI did not demonstrate sufficient experience was reasonable.

TECHNICAL APPROACH

The Air Force, based on its extensive procurement experiences in infrared imaging, has serious concerns about several of TMI's approaches to technical problems and believes that certain of these approaches create significant new technical problems. TMI in its proposal neither attempted to justify these approaches nor did it identify and resolve potential problems its approaches may create. Although the Air Force concedes that at least some of the questioned approaches may in fact be justifiable and that problems associated with certain approaches may be overcome, TMI provided no basis in its proposal to evaluate the approaches and determine the likelihood of their ultimate success. This absence of detailed technical information raised a question, in the Air Force's view, as to whether TMI adequately understood the requirement and whether the proposal complied with RADSCAN specifications. TMI disputes these findings.

We have frequently held that a proposal may be excluded from the competitive range for informational deficiencies which are so material that major revisions and additions would be required to make it acceptable. PRC Computer Center, Inc. et al., 55 Comp. Gen. 60 (1975), 75-2 CPD 35. In determining whether informational deficiencies are of such a nature that an agency, within the reasonable exercise of its discretion, may exclude that proposal from the competitive range, we consider a variety of factors, including

how definitely the RFP called for the detailed information, the nature and scope of the informational deficiencies (e.g., whether they tend to show that the offeror did not understand the requirement), whether only one offeror was found to be in the competitive range, and whether a proposal, if reasonably correctable, represents a significant cost savings. Decilog, B-198614, September 3, 1980, 80-2 CPD 169.

TMI argues that the RFP specifically does not require the detailed technical information allegedly omitted. TMI points to a section of the RFP entitled "Specific Content." This section, which is apparently an Air Force form, consists of 14 paragraphs that describe types of information which if designated with an "X" must be contained in the proposal. The only paragraph which is not designated is paragraph g which, if designated, would require the submission of a "[c]omplete detailed statement of solution, including preliminary design, layout, sketches and other information indicating configuration, [and] functions of components." TMI argues that this provision absolves all offerors of submitting detailed technical information concerning its solution to the problems presented by the RADSCAN specifications. We disagree.

The reason the Air Force did not designate the paragraph that requires a detailed solution is that a final design or solution is not to be developed until the second stage of contract performance. Other RFP provisions make clear that the nondesignation of paragraph g was not intended to absolve offerors of presenting detailed technical information concerning its approach. For example, the RFP discloses that "Compliance with Requirements" will be determined, in part, on the basis of whether the proposal "offer[s] sufficient information to adequately complete the evaluation" and "explicitly describe[s] how the offeror will satisfy all the requirements of the Work Statement." Moreover, the "Specific Content" section of the RFP instructs offerors to "outline the basic difficulties of the problem and approaches toward solving it" and to include "[p]rinciples which may be applied in the solution of the problem [and an] evaluation of various methods considered, with justification for that selected." We believe that, read as a whole, the RFP adequately put offerors on notice that while a final design is not required, approaches would have to be presented and supported to an extent necessary to permit a meaningful evaluation of the proposal. We note that no other offeror was criticized for omitting technical detail. Moreover, we have long held that it

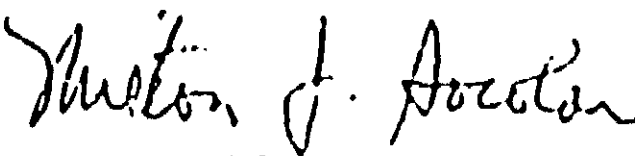
is the responsibility of each offeror to establish that what it proposes will meet the Government's needs. See Caelter Industries, Inc., B-203418, March 22, 1982, 82-1 CPD 265.

Next, based on the number and extent of specific deficiencies cited, we do not find unreasonable the Air Force's conclusion that TMI would have to make substantial additions and revisions to its proposal to correct the deficiencies. The approaches the Air Force found questionable encompass nearly every component of RADSCAN. We will not discuss the specific approaches for which TMI was criticized because TMI regards each as proprietary. We have, however, closely examined the record in this case and conclude that viewed as a whole, these deficiencies are such that a substantial effort would be required on TMI's part to correct the proposal.

Additionally, we note that the determination to eliminate TMI did not create a competitive range of one. Rather, two firms were initially found to be in the competitive range. Moreover, TMI's proposal, even if it were correctable, does not represent significant cost savings to the Government.

In conclusion, the Air Force's determination that TMI's proposal fails to demonstrate significant related experience and lacks technical detail is supported by the record. Although there is disagreement between TMI and the Air Force concerning nearly every aspect of the evaluation, TMI has not presented a basis upon which we could find that the Air Force acted unreasonably or arbitrarily in excluding the proposal from the competitive range.

The protest is denied.

for 
Comptroller General
of the United States